C.J'sCourt

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Review Application No. 9049 of 2003
In
W.P. No. 454 (S/B) 2003

Naresh Kumar Garg
S/o Shri Pyare Lal
R/o Lakhi Bagh, Dehradun
Presently posted as Assistant Engineer,
Additional Project Division,
U.P. Jal Nigam, Ghaziabad ---- Applicant

Versus

1. Uttaranchal Pey Jal Sansadhan Vikas & Nirman Nigam, through its Managing Director, Dehradun, Uttaranchal.
2. The Chairman, Uttaranchal Pey Jal Sansadhan Vikas & Nirman Nigam, Dehradun, Uttaranchal.
3. The Managing Director, Uttaranchal Pey Jal Sansadhan Vikas & Nirman Nigam, Dehradun, Uttaranchal.
4. The Managing Director, U.P. Jal Nigam, 6 Rana Pratap Marg, Lucknow.
5. The Chief Engineer, E-2(1) U.P. Jal Nigam, 6 Rana Pratap Marg, Lucknow.
6. The Under Secretary (Administration), Uttar Pradesh Jal Nigam.

---- Respondents

Mr. S.S. Chauhan, Advocate, for the applicant.
Mr. N.S. Pundir, Advocate, for the respondents i/b Mr. V.B.S. Negi

Coram: Hon'ble S.H. Kapadia, C.J.
Hon'ble Rajesh Tandon, J.

Date: 29th September, 2003:

PC:

1. On 2nd September 2003, Writ Petition No. 454 of 2003 was filed by the Review Petitioner Naresh Kumar Garg inter alia, seeking a direction to refix the petitioner's seniority in the cadre of Assistant Engineers. In the Writ Petition, grievance was made that despite petitioner's representations, the opposite parties had promoted juniors to the petitioner to the post of Executive Engineer. Petitioner is an Assistant Engineer working at Additional Project Division, U.P. Jal Nigam, Ghaziabad. He has not been promoted as an Executive Engineer. His grievance in the Petition was that despite his representations, the opposite parties had promoted his juniors to the post of Executive Engineer. In the Petition, he has also challenged the

seniority list dated 4th November 2000 released by U.P. Jal Nigam (Annexure I to the Writ Petition). He has, further, alleged that the impugned seniority list dated 4th November 2000 was arbitrary and void ab-initio. He has also challenged promotions pursuant to the impugned seniority list dated 4th November 2000.

Under the above circumstances, in view of the averments in the Writ Petition, the following order was passed by us on 5th September 2003:

> "Subject matter of this petition can be adjudicated upon under U.P. Public Service Tribunals Act, 1976. The petitioner has not exhausted that remedy. Hence, the writ petition is rejected.
>
> Liberty is given to the petitioner to move the Tribunal. We have not gone into the merits of the matter. That question is kept open."

2. Petitioner has moved by way of Review Application No. 9049 of 2003 on the ground that his case was covered by the judgment of the Supreme Court in the case of Public Service Tribunal Bar Association V/s State of U.P. reported in 2003 AIR SCW 653. The Review is also filed by the petitioner on the ground that the case of the petitioner was covered by the decision of the earlier Bench of this Court dated 5th October 2001 in Writ Petition No. 860 of 2001.

It was argued on behalf of the Review Petitioner that where the cause of action is based on "Inaction" or "omission" on the part of the Government, the claimant cannot be asked to move the State Service Tribunal. In this connection, reliance was placed on the judgment of the Supreme Court referred to above. It was argued that under similar circumstances, the earlier Bench of this Court had allowed the Writ Petition No. 860 of 2001 in the case of Sukhdev Singh Mehta V/s State of Uttaranchal.

3. We do not find any merit in this Review Petition. In every matter, the Court is required to examine the averments in the Writ Petition. In the present case, there are specific averments in the Writ Petition alleging arbitrariness on the part of the opposite parties in

promoting juniors of the petitioner to the post of Executive Engineer (see para 10 of the Writ Petition). Similarly, vide para 30 of the Writ Petition, the seniority list released by U.P. Jal Nigam on 4th November 2000 has been challenged as malafide and arbitrary. Similarly, vide para 32 of the Writ Petition, the same seniority list dated 4th November 2000 and promotions made thereon are challenged as void. In the circumstances, on facts of this case, the judgment of the Supreme Court in the case of Public Service Tribunal Bar Association (supra) has no application. Similarly, the judgment of the earlier Bench of this Court in the case of Sukhdev Singh Mehta (supra) has no application to the facts of this case. In that matter, Sukhdev Singh Mehta had exercised his option prior to enforcement of Hill Sub- Cadre Regulations, 1998 and no action was taken by the opposite parties in that mater on that option and, therefore, Jal Nigam was directed to consider the case of Sukhdev Singh Mehta. Therefore, the judgment of the earlier Bench dated 5th October 2001 in Sukhdev Singh Mehta's case has no application. We have to go by the averments in each case. As stated above, in the present case, the grievance of the petitioner has been that his juniors have wrongly been promoted to the post of Executive Engineer; that the seniority list dated 4th November 2000 was issued arbitrarily and for extraneous reasons and lastly, in the prayer clause, the petitioner has asked for refixation of his seniority in the cadre of Assistant Engineers. In the circumstances, we have directed the petitioner to move the State Service Tribunal.

4. For forgoing reasons, no grounds for Review are made out. Therefore, Review Application No. 9049 of 2003 is rejected.

(Rajesh Tandon, J.) **(S.H. Kapadia, C.J.)**

Gurpreet